

STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

October 16, 2018

**OFFICE OF
APPELLATE COURTS**

In re Victoria Carlson and Stephen Carlson,

Petitioners,

In re the Matter of:
Victoria Carlson and Stephen Carlson,

Petitioners,

vs.

Emily Johnson Piper, in her official
capacity as Commissioner of Minnesota
Department of Human Services,

Respondent,

Tina Curry, in her official capacity as
Director of Ramsey County Community
Human Services, Financial Assistance
Division, et al.,

Respondents.

ORDER

A18-1578

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Kirk,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

In a June 8, 2017 order, respondent Minnesota Commissioner of Human Services
determined that petitioner Victoria Carlson was no longer eligible, after turning 65 years

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old, for medical assistance for certain persons needing treatment for breast or cervical cancer (MA-BC), but that she was eligible for medical assistance for the aged (MA-EP) with a \$433 spenddown. In the same order, the commissioner required that payment of MA-BC benefits be restored and continued while the appeal was pending and until Carlson was given proper notice of the termination of those benefits. In an August 30, 2017 order, the commissioner dismissed Carlson's appeal from the subsequent notice of MA-BC benefits termination. Carlson and her husband (together, petitioners) filed an appeal in district court, and the district court issued an order on May 29, 2018, affirming the commissioner's decisions.

Petitioners filed an appeal (A18-1380) in this court from the district court's decision. And petitioners separately filed a petition for a writ of mandamus to require the district court to require the commissioner to continue MA-BC benefits during the pendency of appellate proceedings.

Mandamus is an extraordinary equitable remedy, available only in the absence of an adequate remedy at law to compel the performance of a duty required by law. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004); Minn. Stat. § 586.01-.02 (2016). Petitioners have not demonstrated a basis for a writ of mandamus.

Petitioners seek continued payment of MA-BC benefits until all appeals have been exhausted. They rely on the commissioner's statement in the June 8, 2018 order that the MA-BC benefits should be extended "while the *appeal* is pending and until the Agency can provide adequate notice of the program change to [petitioners]." (Emphasis added.)

This statement understandably may have misled petitioners to believe that Carlson is entitled to continue receiving MA-BC benefits until her eligibility for those benefits is finally resolved. The governing statute and rule, however, provide for the continuation of benefits only during the pendency of the appeal to the commissioner.

Under administrative rules governing the department of human services, "A local agency shall not reduce, suspend, or terminate eligibility when a recipient [timely] appeals [a benefits determination] under subpart 2 . . . unless the recipient requests in writing not to receive continued medical assistance while the appeal is pending." Minn. R. 9505.0130, subp. 1 (2017). The appeal under subpart 2 that is referenced is the initial, administrative appeal to the commissioner of human services. *See id.*, subp. 2 (providing for appeal, hearing, and decision by commissioner). Consistent with Minn. R. 9505.0130, the commissioner noted that Carlson had elected to continue receiving benefits during the pendency of the appeal and directed that Carlson continue to receive benefits through the pendency of the appeal.

The continued payment of benefits after the commissioner issues a decision is governed by Minn. Stat. § 256.045, subds. 5 and 10 (2016). Under subdivision 5, "[a]ny order of the commissioner is binding on the parties and must be implemented . . . until the order is reversed by the district court or unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10." Subdivision 10 requires that, when the commissioner or district court rules in favor of the recipient, benefits continue to be paid pending appeals to the commissioner, the district court, the


court of appeals, and the supreme court. Minn. Stat. § 256.045, subd. 10. Because neither the district court nor the commissioner ordered the payment of benefits, subdivision 10 does not apply here. Instead, subdivision 7 governs and requires implementation of the commissioner's order pending any further appeals. Accordingly, Carlson is not entitled to continue receiving MA-BC benefits during the appeal to this court.

Because petitioners have not established the existence of a duty clearly required by law, mandamus relief is not available.

IT IS HEREBY ORDERED: The petition for a writ of mandamus is denied.

Dated: October 16, 2018

BY THE COURT



Renee L. Worke
Presiding Judge

FILED

December 18, 2018

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT
A18-1578

In re Victoria Carlson and Stephen Carlson,

Petitioners,

In re the Matter of:

Victoria Carlson and Stephen Carlson,

Petitioners,

vs.

Emily Johnson Piper, in her official
capacity as Commissioner of Minnesota
Department of Human Services,

Respondent,

Tina Curry, in her official capacity as
Director of Ramsey County Community
Human Services, Financial Assistance Division, et al.,

Respondents.

ORDER


Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of petitioners Victoria Carlson and
Stephen Carlson to file an amended petition for further review be, and the same is, denied.

IT IS FURTHER ORDERED that the petition of Victoria Carlson and Stephen
Carlson for further review be, and the same is, denied.

Dated: December 18, 2018

BY THE COURT:


Lorie S. Gildea
Chief Justice

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Minnesota Department of **Human Services**

**DECISION OF
STATE AGENCY
ON APPEAL**

In the Appeal of: Victoria Carlson
For: Medical Assistance
Agency: Ramsey County Community Services Department
Docket: 185231

On April 13, 2017, Human Services Judge Ellen Longfellow held an evidentiary hearing under Minn. Stat. § 256.045, subd. 3.

The following people appeared at the hearing. The Appellant and her husband appeared in person and Ms. Phillips appeared by telephone:

Victoria Carlson, Appellant
Stephen Carlson, Appellant's husband and representative
Ebony Phillips, Ramsey County Financial Worker

Based on the evidence in the record and considering the arguments of the parties, I recommend the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether Ramsey County (Agency) correctly determined that the Appellant was no longer eligible for the Medical Assistance for Breast / Cervical Program but was now eligible for Medical Assistance for the Elderly with a spenddown of \$433 per month.

Whether the Agency properly closed the Appellant's Medical Assistance for the Elderly coverage because she failed to meet the spenddown requirements.

FINDINGS OF FACT

1. The Appellant had coverage for health insurance through the Medical Assistance for Breast/Cervical Cancer Program. The Agency sent out a Health Care Notice of Action on October 5, 2016 that said that the Appellant's medical assistance would stop on October 31, 2016 because she did not meet her spenddown requirements. *Exhibit 1*. The Appeals office received the Appellant's request for an appeal on November 16, 2016. A hearing was scheduled for December 14, 2016. The Appellant did not show up for that hearing and the appeal was dismissed on December 15, 2016. The Appellant requested that the Appeals Division reconsider the dismissal on January 5, 2017. On February 8, 2017, the Director of Appeals granted the Appellant's request for reconsideration and ordered the appeal to be reopened. *Exhibit 5*.

2. On April 13, 2017, an evidentiary hearing was held with the Appellant and her husband in – person and the Agency representative on the telephone. Five exhibits were admitted into the record at the time of the hearing.¹ The record was held open for additional documents to be submitted by both parties until April 27, 2017. After the hearing, the Appellant and the Agency submitted documents that were accepted as exhibits.²

3. The Appellant was diagnosed with breast cancer in 2013 when she was screened as part of the National Breast and Cervical Cancer Early Detection Program which in Minnesota is called the SAGE program. The money in this program does not pay for treatment but pays for the screening tests and referral. *Exhibit 2*.

¹ Exhibit 1 – Agency Appeal Summary; Exhibit 2 – Materials from Appellant dated January 4, 2017; Exhibit 3 – Materials from Appellant dated January 11, 2017; Exhibit 4 – Materials from Appellant dated April 12, 2017; Exhibit 5 – Reconsideration Order.

² Exhibit 6 – Materials from Appellant dated April 25, 2017; Exhibit 7 – Materials from Appellant dated April 27; Exhibit 8 – Materials from Agency dated April 17, 2017; Exhibit 9 – Materials from Agency that include material received from Appellant dated April 28, 2017; Exhibit 10 – Memo from Agency to Appellant dated May 1, 2017 regarding material received; Exhibit 11 – Memo from Appellant dated May 15, 2017 regarding pending coverage; Exhibit 12 – Appellant's appeal of February 1, 2017 Agency Notice of Action.

4. The Appellant's birthdate is November 11, 1951 so she turned 65 on November 11, 2016. She obtained Medical Assistance for Breast Cancer under the State of Minnesota medical assistance program from 2013 until the Agency terminated her coverage in July, 2016 and determined that she was no longer eligible for that program but was now eligible for Medical Assistance for the Elderly Program with a spenddown. *Exhibits 1 and 2; Testimony of Appellant and her husband.*

5. In October, 2016, the Agency determined that the Appellant did not meet her spenddown requirements so it sent out the notice to terminate her as of October 31, 2016. The Agency restored the Appellant's medical assistance with a spenddown for November, 2016. The Agency should also restore coverage for December, 2016 for the pending appeal. The Agency has reopened the Appellants Medical Assistance for Breast Cancer from January – April, 2017 and should extend that to May, 2017 while the appeal is pending and until the Agency can provide adequate notice of the program change to the Appellants. *Exhibit 8.*

6. The Agency's position is that the Appellant is no longer eligible for medical assistance for Breast Cancer Program because she turned 65 in November, 2016 and was now eligible for Medicare. The Agency says that she is now eligible for the Medical Assistance for the Elderly with a spenddown and that the Appellant needed to submit renewal materials for this coverage or it will terminate her coverage. *Exhibit 8; Testimony of Ebony Phillips.*

7. The Agency calculated the Appellant's spenddown to be \$433 a month based upon her and her husband's monthly income of \$1503 and the income standard for a family of two for the Medical Assistance for the Elderly is \$1070. *Exhibit 1.*

8. The Appellant argues that she should be able to continue in the Medical Assistance for Breast Cancer until her cancer treatment is complete and that putting her in the Medical Assistance for the Elderly Program is unfair and violates the Constitution. *Testimony of Appellant and her husband; Exhibit 2.*

9. I find that the Agency erred when it transferred the Appellant from the Breast Cancer Program to the Elderly Program in July, 2016 because she met all of the eligibility requirements for the Breast Cancer Program at that time until November 11, 2016. The Appellant should not have been transferred to the Medical Assistance Program until December, 2016. The Agency should not then have been able to terminate the Appellant due to her failure to meet the spenddowns in October, 2017 since she should not have been in that program at that time.

10. I find that when the Appellant turned 65 years old, she was no longer eligible for the Medical Assistance for Breast Cancer Program and at that point for December, 2016, the Agency could have transferred the Appellant to the Medical

Assistance for the Elderly program. The Agency did not provide adequate notice to the Appellant concerning this program change. It will need to provide adequate notice now to take her off of the Breast Cancer Program and enroll her in the Elderly program.

CONCLUSIONS OF LAW

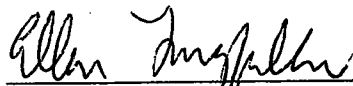
1. This appeal is timely under Minn. Stat. § 256.045, subd. 3.
2. The Commissioner of Human Services has jurisdiction over this appeal under Minn. Stat. § 256.045, subd. 3.
3. Under the Minnesota statutes, there are eligibility requirements for special categories and one of the categories is "Certain persons needing treatment for breast or cervical cancer". The relevant criteria to be eligible for this medical assistance program is that the person has been screen and diagnosed as having breast cancer and needs treatment according to a health professional; meets the income guidelines for the state breast cancer control program; is under age 65; not otherwise eligible for medical assistance under U.S.Code, title 42, section 1396a (a) (10) (A) (i); and is not otherwise covered under creditable coverage as defined by federal law. *Minn. Stat. 256B.057, subd. 10 (a)*.
4. Medical assistance under the breast and cervical cancer program for an eligible person "shall be limited to services provided during the period that the person receives treatment for breast or cervical cancer." *Minn. Stat. 256B, subd. 10 (b)*. The Appellant argues that this provision means that she should be able to continue with her treatment even though she no longer meets the eligibility requirement of being 64 or under in age. This provision specifically states that it applies to an "eligible" person. When the Appellant turned 65, she was no longer an eligible person for the breast cancer program.
5. Aged, blind or disabled persons have a basis for eligibility for medical assistance. *Minn. Stat. § 256B.055, subd. 7*.
6. For medical assistance eligibility, persons whose basis for eligibility is age or disability may have income up to 100 per cent of federal poverty guidelines. *Minn. Stat. § 256B.057, subd. 3*. Persons with income in excess of this amount may still be eligible for medical assistance after meeting a monthly "spenddown." *Minn. Stat. § 256B.056, subd. 5*. The amount of the "spenddown" is the difference between the person's income and 80 per cent of federal poverty guidelines. *Minn. Stat. § 256B.056, subd. 5c*.
7. The current federal poverty guidelines for a household of two is \$1,070 per month. Because Appellant's household income is in excess of this, she must pay a spenddown each month before being eligible for medical assistance. The amount of the monthly spenddown is the difference between Appellant's income of \$1,503 and the

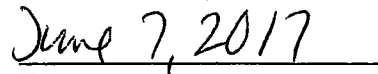
monthly income standard which is \$1070. This works out to \$433. The County's determination that Appellant must meet a monthly spenddown of \$433 should be affirmed.

8. The Appellant makes a compelling argument that the spenddown effectively bars her from obtaining continued medical treatment for her breast cancer. After rent and the spenddown and food and other essentials, she has very little extra money. The Appellant contends that this violates her civil and constitutional rights. Unfortunately, the law does not permit me to address constitutional claims. *Minn. Stat. 256.0451, subd. 16.*

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT the Commissioner of Human Services AFFIRM the Agency's determination that the Appellant is no longer eligible for the Medical Assistance Program for Breast Cancer due to her age and that she is now eligible for the Medical Assistance for the Elderly Program subject to a spenddown of \$433 and REVERSE the Agency's termination of the Appellant's Medical Assistance for the Elderly as of October 31, 2016 because she should not have been in that program at that time.


Ellen Longfellow
Human Services Judge

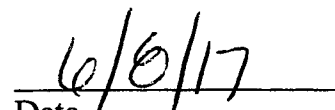

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the Human Services Judge's recommendation as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:


Inta M. Sellars
Co-Chief Human Services Judge


Date

cc: Victoria Carlson, Appellant
Ramsey County, Karen Casalenda

State of Minnesota
Ramsey County

District Court
Second Judicial District

Court File Number: **62-CV-17-4889**

Case Type: Appeal from Administrative
Agency

Notice of Entry of Judgment

STEPHEN CARLSON
PO BOX 4032
ST PAUL MN 55101

In Re: In re the Matter of Victoria Carlson, Stephen Carlson vs EMILY JOHNSON PIPER, in her official capacity as Commissioner of MN Dept of Human Services, Tina Curry, in her official capacity as Director of Ramsey County Community Human Services, Financial Assistance Division, Ebony Phillips, Teryl Nelson

Pursuant to: The Findings of Fact, Conclusions of Law, and Order Affirming the Commissioner of Human Services' Decisions, Judge Bartsh dated 5/24/18.

You are notified that judgment was entered on June 21, 2018.

Dated: June 21, 2018

cc :Victoria Carlson; Brett O'Neill
Terry; Dana Lynn Mitchell

Michael F. Upton
Court Administrator

By: Linda Braske
Deputy Court Administrator
Ramsey County District Court
15 West Kellogg Boulevard Room 600
St Paul MN 55102
651-266-8253


62-CV-17-4889


NOENJUDG

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**Additional material
from this filing is
available in the
Clerk's Office.**